NO. 48181-2

COURT OF APPEALS, DIVISION II
STATE OF WASHINGTON

STATE OF WASHINGTON, RESPONDENT

v.

LATRINA DESHELL MCNAIR, APPELLANT

Appeal from the Superior Court of Pierce County
The Honorable Jerry Costello

No. 14-1-03053-5

RESPONSE BRIEF

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A. ISSUES PERTAINING TO APPELLANT'S ASSIGNMENTS OF ERROR.

1. Was any Sixth Amendment right to confront witnesses claim waived when the defendant failed to object below and failed to properly raise it on appeal, and was any error, if it did occur, harmless in light of the other evidence presented? (Appellant's Assignment of Error No. 1)

2. When viewed in the light most favorable to State, was there sufficient evidence to support a prima facie inference that the defendant committed the crime of assault of a child in the third degree? (Appellant's Assignment of Error No. 2)

3. Should this court decline to determine whether the evidence was sufficient to support a conviction and to disprove lawful parental discipline when those issues appear to have been abandoned by the defendant in her opening brief?

B. STATEMENT OF THE CASE.

1. Procedure

On August 4, 2014, LATRINA DESHELL McNAIR, hereinafter "defendant" was charged with assault of a child in the third degree. CP 1-2. An amended information was filed on August 10, 2015, in which the charging period was corrected. CP 39.

On August 3, 2015, the parties appeared for jury trial. 8/3/15[1] RP 1. A CrR 3.5 hearing was conducted and the trial court found the defendant's statements to the police admissible. 8/3/15 RP 76-78. The State also moved to amend the information to adjust the charging period. II RP 208. The court allowed the amendment to the charging period. II RP 211. At the close of the State's case, defense moved for a directed verdict, arguing that the State has not met their burden of proof. II RP 219. The court denied the defense motion. II RP 223.

On August 13, 2015, the defendant was found guilty as charged. 8/13/15 RP 3. She was sentenced to 45 days in custody. CP 69-81.

2. Facts

a. CrR 3.5 hearing

Tacoma Police Officer William Flippo testified that on July 29, 2014, he was working with TPD Officer J.R. Smith. 8/3/15 RP 40, 58. Officers Flippo and Smith were dispatched to a report of possible child abuse. *Id.* Officer Flippo observed the victim, Z.M., who had a U-shaped cut on one arm and bruises. 8/3/15 RP 41-42. Officer Smith saw bruises on both arms. 8/3/15 RP 59.

CPS also responded and contacted the defendant. I RP 63. The CPS agent observed extensive bruising on Z.M.'s body. I RP 74. The

[1] There are several volumes of verbatim reports of proceedings that are independently numbered and dated, as well as three consecutive volumes. The State will be referring to the separately dated volumes by date, and the consecutive volumes by volume number.

defendant told Harris that she had "whooped" Z.M.'s "ass" and acknowledged that she had caused the bruises. I RP 63.

The defendant told police that Z.M. had been punished for acting out and that she punished her the "normal way." 8/3/15 RP 42. The defendant stated that she had Z.M. stand with her hands on the wall and spanked her buttocks with a belt. 8/3/15 RP 42-43. When asked about the other injuries on Z.M., the defendant stated that she thought they happened when Z.M. was trying to get away when she was being spanked with the belt. 8/3/15 RP 43. Z.M. had a cut that appeared to have been scabbed over and bruising, but the defendant denied knowledge of those injuries. *Id.* Z.M.'s grandmother told police that she had sustained the injury on the playground the day before. 8/3/15 RP 52. Officer Smith recalled the defendant stated that Z.M. was being disruptive, running in the apartment and hurting herself. 8/3/15 RP 61. Officer Smith did not believe the deep, dark bruising was consistent with self-inflicted injuries. 8/3/15 RP 66.

The defendant testified as part of the CrR 3.5 hearing. I RP 80. Defendant denied making statements to the CPS agent. I RP 85.

b. Trial Facts

Laura Harris was a neighbor of the defendant's. I RP 39-40. Harris' daughter and Z.M. were friends. I RP 40. Harris called Child Protective Services (CPS) in July 2014 after she observed bruises on

Z.M.'s arm. I RP 41. Harris testified in court that Z.M. had reported to her that the defendant had caused her injuries[2]. I RP 41.

Bridget Spence, the CPS agent, responded to the report made by Harris. I RP 91. Spence observed bruising on Z.M.'s right arm. I RP 95. She also observed a deep scratch that had scabbed over. *Id.* Upon closer inspection, Spence observed other bruises on Z.M. as well. I RP 96. The defendant told Spence that she had "whooped" Z.M.'s "ass" because she had gotten in trouble. I RP 94. The defendant acknowledged to Spence that she had caused the bruises on Z.M. *Id.* Z.M. told Spence that the defendant had caused the injuries. I RP 97.

Officer Flippo and Officer Smith responded to the defendant's residence on July 29, 2014. I RP 109; II RP 135. Officer Flippo observed that Z.M. had a U-shaped cut on her arm and a lot of bruising on both arms. I RP 111. He asked Z.M. who had caused the injuries and she stated that her aunt did[3]. I RP 111. Officer Flippo asked the defendant how Z.M. had sustained the injuries, and the defendant indicated that she had disciplined Z.M. in the "normal way." I RP 112. The defendant described the discipline as making Z.M. stand with her hands on the wall and spanking her on the buttocks with a belt. *Id.* The defendant indicated that Z.M. was trying to get away from her as she was being spanked and thought injuries were caused by Z.M. running around the room. *Id.* The

[2] Defense counsel did not object to this testimony.
[3] Defense counsel did not object to this testimony.

defendant denied knowing how Z.M. sustained the cut on her arm. I RP 113. Officer Smith also spoke to the defendant. II RP 137. The defendant told Officer Smith that Z.M. was being disruptive and throwing herself around the apartment. *Id.*

O.M., Z.M.'s 10-year-old brother, also resided in the house with the defendant and Z.M. II RP 145-147. O.M. recalled the police coming to his house after Z.M. got in trouble for something. II RP 148. O.M. reported that Z.M. had gotten a spanking from his mom and that she had used a belt. *Id.* He heard Z.M. screaming and crying. II RP 149. After the spanking, O.M. observed marks all over Z.M.'s body. *Id.* He also observed Z.M. running all over the living room because she did not want a spanking. II RP 149-150. O.M. stated that Z.M. was really afraid and was in tears. *Id.* After the spanking, Z.M.'s grandmother drew a bath for her with warm water and baking soda. II RP 150. O.M. did not see Z.M. run into any furniture in the house. *Id.*

Stacia Adams conducted a forensic interview of Z.M. II RP 160-161. Adams observed bruising on Z.M.'s neck, arms, legs and chest. II RP 161. Adams testified that Z.M. told her that "Momma Latrina" had caused the injuries[4]. II RP 162.

Michelle Breland, a pediatric nurse-practitioner, saw Z.M. shortly after the incident. II RP 188, 193. Breland is trained to diagnose and treat

[4] Defense counsel did not object to this testimony.

children. II RP 190-191. She is able to order laboratory testing, prescribe medications, and provide all the care a patient would need from a physician. II RP 191. Breland conducted a full physical on Z.M. II RP 193. Z.M. told Breland that she had sustained the injuries when she had gotten a "whooping." II RP 194. Breland observed: (1) a loop mark on the right arm where the skin was broken and scabbed, (2) a large bruise on the right arm, (3) bruises to the upper shoulder and arm, (4) a scabbed loop mark on the right thigh, (5) bruising to the right thigh, and bruising to both inner thighs. II RP 195. Breland testified that Z.M.'s injuries were consistent with her statements about getting a "whooping." II RP 196. The exam occurred on July 31, 2014, and Breland estimated the bruising as being two to four days old. II RP 200. Breland believed that the injuries could have been caused by a belt. II RP 204. She stated that they were more consistent with a "whooping" than with the child running into walls and doors. II RP 206-207.

Z.M. was called as a witness at trial. I RP 46. Z.M. was able to spell her first name for the court. *Id.* She testified that she was eight years of age and that she was born on September 3, 2006. I RP 47. Z.M. was able to state where she went to school, the name of her teacher and her favorite subject in school. *Id.* When asked about a specific person, presumably the defendant, Z.M. was unable to answer. I RP 48. The court took a recess, after which Z.M. testified about her siblings and others in her household. I RP 48-49. After another break, Z.M. testified again

about her siblings and her favorite color. I RP 55-56. Thereafter Z.M. was unable to answer any questions. I RP 56.

Gloria McNair, Z.M.'s grandmother, testified that she was living with her grandchildren O.M., Z.M. and B.M. at the time of this incident. II RP 225. The defendant is Gloria's daughter. *Id.* Gloria stated that the defendant was like a mother to Z.M. and called her mommy. II RP 229. Gloria indicated that on July 26, 2014, Z.M. had a breakdown. II RP 242-244. Gloria testified that Z.M. had run around the residence had hit herself on furniture. II RP 244.

Gloria McNair outlined the "discipline program" regarding the children. II RP 234-235. If a child in her household acted in a way harmful to someone else, the offending child would get a spanking, three to five "licks" or spankings. II RP 235. The child would put his or her hands on the wall while the spanking was administered. *Id.* The spankings were carried out with a belt. *Id.* Gloria stated that she believed a neighbor child had caused the injuries to Z.M. II RP 252. She did prepare a bath for Z.M. with baking soda and water. II RP 256.

Gloria admitted seeing the defendant hit the children previously. *Id.* She had also previously observed Z.M. running from the defendant when the defendant would spank her with the belt. II RP 257.

Defendant's husband, Japheth Williams, testified for the defense. II RP 261-262. He had seen the defendant spank the children with a belt on previous occasions. II RP 268.

The defendant testified on her own behalf. II RP 274. She indicated that for "extreme situations" she implemented spankings. II RP 291. The spankings would also include spankings with a belt. II RP 293. She has given Z.M. spankings with a belt on prior occasions. II RP 325.

On July 27, 2014, the defendant was at Gloria's residence with the children. II RP 298. At that time the defendant decided to give Z.M. a spanking. II RP 303-304. The spanking was to be administered with a belt. II RP 305. The defendant stated that when she tried to hit Z.M. with the belt the first time, Z.M. moved off the wall she was up against. *Id.* Z.M. started crying and scraping her nails down her neck. II RP 306. The defendant stated that Z.M. pushed her into the closet. *Id.* The defendant described Z.M. slamming into a door. II RP 307. The defendant stated that she never hit Z.M. II RP 309-310.

The defendant testified that some of Z.M.'s injuries were from her running in the house and that injuries on Z.M.'s inner thighs were inflicted by a person. III RP 327-328. The defendant admitted that the marks on Z.M. could possibly be belt marks. III RP 333.

C. ARGUMENT.

1. TO THE EXTENT THAT THE DEFENDANT IS RAISING ISSUES IN HER ASSIGNMENT OF ERRORS BUT NOT BRIEFING THE ISSUES, THIS COURT SHOULD NOT CONSIDER SUCH CLAIMS AS THEY ARE UNSUPPORTED BY ARGUMENT.

Arguments unsupported by authority and analysis should not be considered by the Court. ***Cowiche Canyon Conservancy v. Bosley***, 118 Wn.2d 801, 809, 828 P.2d 549 (1992); ***State v. Elliott***, 114 Wn.2d 6, 15, 785 P.2d 440 (1990); ***Saunders v. Lloyd's of London***, 113 Wn.2d 330, 345, 779 P.2d 249 (1989); ***In re Disciplinary Proceeding against Whitney***, 155 Wn.2d 451, 467, 120 P.3d 550 (2005)(*citing* ***Matter of Estate of Lint***, 135 Wn.2d 518, 532, 957 P.2d 755 (1998)(declining to scour the record to construct arguments for a litigant); RAP 10.3(a).

The defendant raises a number of assignment of errors in her brief, but never offers any argument, law or analysis in the body of the brief. Assignment of error No. 2 claims that the trial court erred in failing to grant a directed verdict. Corrected Brief of Appellant, page 1. The defendant also raises a sufficiency of the evidence claim and whether there was insufficient evidence to establish an absence of lawful parental discipline. *Id.* These claims should be summarily rejected because they are not addressed in the body of the brief. Defendant only develops two issues: 1) a Sixth Amendment claim; and 2) a claim that there is insufficient evidence to corroborate the defendant's confession under the

corpus delicti rule. To the extent that the defendant raises, then abandons, sufficiency of the evidence and lawful parental discipline claims, this court should decline to address them.

2. ANY EVIDENCE INTRODUCED REGARDING Z.M.'S IDENTIFICATION OF THE DEFENDANT AS THE PERPETRATOR WAS WAIVED BECAUSE DEFENSE COUNSEL FAILED TO OBJECT AT THE TIME AND, EVEN IF DEFENSE COUNSEL HAD OBJECTED, ANY ERROR WAS HARMLESS.

a. This court should decline to reach the merits of the defendant's Sixth Amendment claim as the evidence was not objected to below and the defendant is not raising an ineffective assistance of counsel claim on appeal.

"A party may only assign error in the appellate court on the specific ground of the evidentiary objection made at trial." ***State v. Guloy***, 104 Wn.2d 412, 422, 705 P.2d 1182, 1189 (1985). If the specific objection made at trial is not the basis the defendants are arguing on appeal, "they have lost their opportunity for review." *Id.* To preserve an issue for review, an objection must be timely and specific. ***State v. Gray***, 134 Wn. App. 547, 557, 138 P.3d 1123 (2006).

In addition, the appellate court will not entertain a claim of error not raised before the trial court. RAP 2.5(a). An exception to that general rule is RAP 2.5(a)(3), which requires an appellant to demonstrate a manifest error affecting a constitutional right. ***State v. Gordon***, 172 Wn.2d 671, 676, 260 P.3d 884 (2011). "Stated another way, the appellant

'must identify a constitutional error and show how the alleged error actually affected the appellant's rights at trial.' " ***State v. O'Hara***, 167 Wn.2d 91, 98, 217 P.3d 756 (2009) (*quoting* ***State v. Kirkman***, 159 Wn.2d 918, 926–927, 155 P.3d 125 (2007)).

To determine if an error is of constitutional magnitude, the appellate court looks to whether the defendant's alleged error is actually true, and whether the error actually violated the defendant's constitutional rights. ***O'Hara***, 167 Wn.2d at 98. An error is manifest if it is so obvious on the record that the error warrants appellate review. *Id.*, at 99–100. The defendant must also demonstrate "actual prejudice," meaning the defendant must plausibly show the asserted error had practical and identifiable consequences at trial. ***Gordon***, 172 Wn.2d at 676.

Failure to raise confrontation issues at or before trial bars any consideration on appeal. "A clear line of decisions—***Melendez-Diaz***, ***Bullcoming***, ***Jasper***, and ***Hayes***—requires that a defendant raise a Sixth Amendment confrontation clause claim at or before trial or lose the benefit of the right." ***State v. O'Cain***, 169 Wn. App. 228, 248, 279 P.3d 926 (2012) (*citing* ***Melendez–Diaz v. Massachusetts***, 557 U.S. 305, 129 S. Ct. 2527, 174 L. Ed. 2d 314 (2009); ***Bullcoming v. New Mexico***, 564 U.S. 647, 131 S. Ct. 2705, 180 L. Ed. 2d 610 (2011); ***State v. Jasper***, 174 Wn.2d 96, 271 P.3d 876 (2012); ***State v. Hayes***, 165 Wn. App. 507, 265 P.3d 982 (2011), *review denied*, 176 Wn.2d 1020 (2013)). The same rule applies to the article I, section 22 confrontation clause right of the

Washington Constitution. ***State v. Fraser***, 170 Wn. App. 13, 25, 282 P. 3d 152 (2012); ***O'Cain***, 169 Wn. App. at 252.

In ***Fraser***, the defendant was charged with murdering his ex-girlfriend's new boyfriend. The State introduced evidence documenting Fraser's cell phone communications with his ex-girlfriend to prove motive; that Fraser was obsessed with her and jealous of the victim. *Id.*, at 25. At trial, Fraser objected unsuccessfully on the basis that the records were more prejudicial than probative. *Id.* On appeal, he argued he had a right to confront the person who created the reports. *Id.*, at 26.

Since ***Crawford v. Washington***, 541 U.S. 36, 51, 124 S. Ct. 1354, 158 L. Ed. 2d 177 (2004), the Court of Appeals has held in several cases that the defendant has waived, or failed to preserve, the Confrontation Clause issue where he failed to raise it in the trial court. *See*, ***Fraser*** (Div. I), *supra*. In ***O'Cain***, 169 Wn. App. 228 (Div. I), the defendant waived his Confrontation Clause issue where he failed to raise it at trial. The court admitted admission of victim's out of court statements to various medical personnel who treated her for her injuries. *Id.*, at 232. In ***State v. Schroeder***, 164 Wn. App. 164, 262 P. 3d 1237 (2011), Division III of the Court of Appeals held that the defendant waived his Confrontation Clause objection to hearsay: admission of laboratory test results in a drug case without testimony from the analyst who performed the testing. *Cf.* ***Melendez-Diaz***.

This case is similar to ***O'Cain***, where the defendant was charged with assault in the second degree, assault in the fourth degree, and sexual harassment. ***O'Cain***, 169 Wn. App. at 232. During O'Cain's trial, the State introduced statements that the victim had made to various medical personnel. *Id.* The victim did not testify at the trial and he was convicted. *Id.* On appeal, O'Cain stated that the admission of the victim's statements violated his right to confrontation under the state and federal constitutions. *Id.* The appellate court rejected O'Cain's argument, finding that the statements were made for purposes of medical treatment and because he did not assert his confrontation clause objection at or before trial, he was precluded from appellate relief. *Id.* The court provided other examples of constitutional rights that are not explicitly stated to the defendant—for example, it is the responsibility of defense counsel to inform the defendant of the right to testify and that the trial court need not compel defense counsel to engage in cross-examination. *Id.* at 244, *citing* ***State v. Thomas***, 128 Wn.2d 553, 561, 910 P.2d 475 (1996); ***United States v. Hines***, 696 F.2d 722 731 (10th Cir. 1982). The court held that any error to raise a Sixth Amendment claim is defense counsel's alone, and the remedy for such error is an ineffective assistance of counsel claim. *Id.*

In this case, defendant now seeks relief under the Sixth Amendment for statements Z.M. made to (1) Bridget Spence, the CPS agent, (3) Stacia Adams, a child forensic interviewer, and (4) Officer

William Flippo, a first responder[5]. All three witnesses testified that Z.M. had indicated that the defendant was the person who had caused her injuries. I RP 97, 111; II RP 162. None of that testimony was objected to by defense. As the court in ***O'Cain***, *supra*, noted, the trial court cannot reasonably be required to sua sponte raise a confrontation clause objection where defense counsel has determined that no such objection should have been made. ***O'Cain***, 169 Wn. App. at 245. Similarly, in this case the trial court also did not make a sua sponte objection.

Moreover, while the court in ***O'Cain*** held that a defendant's remedy for defense counsel's error in failing to raise a Sixth Amendment claim at trial would be to pursue an ineffective assistance of counsel claim on appeal, the defendant here does not do so. Because defense counsel below did not object to this testimony at or before trial, it is waived and cannot be raised for the first time on appeal. The defendant also does *not* allege that trial counsel was ineffective for failing to object to the testimony. Therefore, this court should deny the defendant appellate relief.

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[5] Defendant alleges on appeal that Michelle Breland provided testimony that Z.M. told her the defendant caused her injuries. Corrected Brief of Appellant, page 6. This, however, is not the case. Breland testified that Z.M. told her she "got in trouble and had gotten a whooping and that she had marks on her arms and legs from that." II RP 194. Breland never testified that Z.M. told her who caused her injuries. Because Breland did not testify regarding who caused Z.M.'s injuries, the State does not address it further. If, however, this court were to accept the defendant's assertion, statements Z.M. made to Breland would be admissible under ER 803(a)(4).

b. Assuming, arguendo, that trial counsel had objected to the testimony and that appellate counsel had properly raised the issue, any error in admitting such testimony was harmless.

An error of constitutional magnitude can be harmless if the State can show beyond a reasonable doubt that any reasonable jury would have reached the same result without the error. *See,* ***State v. Keodara***, 191 Wn. App. 305 317, 364 P. 3d 777 (2015). Confrontation clause errors are subject to harmless error analysis. ***Jasper***, 174 Wn.2d at 117.

The testimony of Spence, Adams, and Flippo, even if admitted in error, was harmless given that the defendant's confession to Spence and Flippo were properly admitted. Spence testified that the defendant admitted to her that she "whooped" Z.M. because Z.M. had gotten into trouble. I RP 94. The defendant acknowledged to Spence that she had caused the bruises to Z.M. *Id.* Officer Flippo testified that the defendant admitted to him that she had spanked Z.M. with a belt. I RP 112.

Given the defendant's statements that were admitted, in which the defendant admitted to others that she spanked Z.M., any error in admitting statements by Z.M. to others was harmless, even if a proper objection had been raised. Because the jury in this case would have reached the same conclusion regardless of this additional testimony by Adams, Spence and Flippo, any error is harmless.

3. WHEN VIEWED IN THE LIGHT MOST FAVORABLE TO THE STATE, THERE WAS SUFFICIENT EVIDNECE TO SUPPORT A PRIMA FACIE INFERENCE UNDER THE CORPUS DELICTI RULE THAT THE DEFENDANT COMMITTED ASSAULT OF A CHILD IN THE THIRD DEGREE.

The corpus delicti doctrine "tests the sufficiency or adequacy of evidence, other than a defendant's confession, to corroborate the confession." ***State v. Dow***, 168 Wn.2d 243, 249, 227 P.3d 1278 (2010) (*citing* ***State v. Brockob***, 159 Wn.2d 311, 327–328, 150 P.3d 59 (2006)). "The purpose of the corpus delicti rule is to prevent defendants from being unjustly convicted based on confessions alone. ***Dow***, 168 Wn.2d at 249 (*citing* ***City of Bremerton v. Corbett***, 106 Wn.2d 569, 576, 723 P.2d 1135 (1986)).

To satisfy the corpus delicti rule, the State must present evidence independent of the incriminating statement that shows the crime described in the defendant's statement occurred. ***Brockob***, 159 Wn.2d at 328. In determining whether this standard is satisfied, the court reviews the evidence in the light most favorable to the State. In assessing whether there is sufficient evidence of the *corpus delicti*, independent of a defendant's statements, the Court assumes the truth of the State's evidence and all reasonable inferences from it in a light most favorable to the State.

State v. Aten, 130 Wn.2d 640, 658, 927 P.2d 210 (1996); ***City of Bremerton v. Corbett***, 106 Wn.2d 569, 571, 723 P.2d 1135 (1986); *see also* ***Brockob***, 159 Wn.2d at 328.

The independent evidence need not be sufficient to support a conviction, but it must provide prima facie corroboration of the crime described in a defendant's incriminating statement. ***Brockob***, 159 Wn.2d at 328. Prima facie corroboration exists if the independent evidence supports a "logical and reasonable inference" of the facts the State seeks to prove. ***State v. Vangerpen***, 125 Wn.2d 782, 796, 888 P.2d 1177 (1995). "Prima facie" in this context means there is "evidence of sufficient circumstances which would support a logical and reasonable inference" of the facts sought to be proved. ***Vangerpen***, at 796. The independent evidence must be consistent with guilt and inconsistent with innocence. ***State v. Aten***, 130 Wn.2d 640, 660, 927 P.2d 210 (1996).

In this case, there is sufficient independent evidence to show that the crime charged, assault of a child in the third degree, occurred. This is true even looking at the evidence in the absence of Z.M.'s statements.[6]

The victim had a deep scratch and bruising. I RP 95. The bruising was on Z.M.'s neck, arms, legs and chest. II RP 161. Michelle Breland observed a loop mark and broken skin on her right arm, bruising to the

[6] The State does not concede that the trial court erred in admitting these statements, as argued above, but merely leaves them out of its analysis to show that there is still sufficient independent evidence to meet *corpus delecti*.

upper shoulder and arm, a scabbed loop on the right thigh, bruising to the right thigh and both inner thighs. II RP 195. Breland found Z.M.'s injuries consistent with her statements about getting a "whooping." II RP 196. She testified that the areas where the bruises were would be unusual areas to bruise accidentally; she had specific loop marks that fit with how Z.M. described having received the injuries. *Id.* Z.M. told Breland, during the course of medical treatment, that she had received a "whooping"—the same word used by the defendant herself to describe what had occurred. I RP 94; II RP 194. Both Gloria and the defendant's husband have previously seen the defendant administer spankings with a belt. II RP 256, 268. Z.M.'s older brother O.M. reported on the day of the incident Z.M. had gotten a spanking from his mom and that his mom had used a belt. II RP 148. He stated he saw marks all over Z.M.'s body and that she was screaming and crying. II RP 149. Based upon the evidence, when taken in the light most favorable to the State, there is sufficient independent evidence to provide the *corpus delicti* of the crime.

D. CONCLUSION.

For the above stated reasons, the State respectfully requests that this court affirm the defendant's conviction.

DATED: June 9, 2016.

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Certificate of Service:
The undersigned certifies that on this day she delivered by U.S. mail or ABC-LMI delivery to the attorney of record for the appellant and appellant c/o his attorney true and correct copies of the document to which this certificate is attached. This statement is certified to be true and correct under penalty of perjury of the laws of the State of Washington. Signed at Tacoma, Washington, on the date below.

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